IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER ST.NO.29529 OF 2004.

Vandan Prakashkumar Jani. ... Appellant.

Versus.

Brihanmumbai Mahanagarpalika. ... Respondent.

Shri Ratankumar Sharma for the Appellant.

Shri Umesh Mahadik for the Respondent-BMC.

CORAM : ABHAY S.OKA, J.

DATED : 19th November 2004.

P.C.:

1. Admit. The Respondent waives service. Considering the facts and circumstances of the case, the appeal is taken up for hearing forthwith.

2. The challenge in the suit filed by the Appellant/Plaintiff is to the order of demolition passed under section 351 of the Bombay Municipal Corporation Act. Prior to the filing of the present suit, the Appellant had filed a suit in the year 1998 challenging the same order. As the Appellant had not given notice under section 527 of the said Act, the Appellant was allowed to withdraw the said suit with liberty to file a fresh suit after giving the statutory notice.

3. It is not in dispute that since the year 1998 till

the date on which the impugned order was passed, the Appellant was protected by ad-interim order.

4. It appears from the impugned order that when the motion came up for hearing before the learned trial Judge on 3rd November 2004, the learned Advocate appearing for the Appellant/Plaintiff was not willing to argue the matter on the ground that no documents were filed by him. The prayer for adjournment was rightly objected to by the Counsel appearing for the Respondent-Corporation. The learned trial Judge adjourned the hearing of the motion till 20th December 2004. However, he declined to continue the ad-interim relief which was operative till that date.

5. Considering the fact that the Advocate for the Appellant was not willing to argue the Motion, the learned trial Judge was justified in not continuing the ad-interim relief. However, it cannot be ignored that in the process, the Appellant has suffered and his structure may be demolished without his motion being considered on merits. Considering the fact that ad-interim relief was operating in favour of the Appellant/ Plaintiff from the year 1998, this is a fit case where one more opportunity should be granted to the Appellant/Plaintiff by setting aside the order dated 3rd November 2004 and by continuing the ad-interim relief which was operating till 3rd November 2004.

6. Hence the following order is passed:

(i) The impugned order dated 3rd November 2004 is quashed and set aside.

(ii) The parties are directed to appear before the learned trial Judge on 29th November 2004 at 11.00 a.m. On that day the Appellant/ Plaintiff will file all documents on which he is relying upon and no further time will be granted to the Appellant/ Plaintiff.

(iii) The Appellant/Plaintiff will not apply for adjournment of the hearing of the Motion on any unreasonable ground.

(iv) Ad-interim relief which was operating in favour of the Appellant till 3rd November 2004 will continue to operate till 6th December 2004. In case the hearing of the Motion is not completed by that date, it will be open for the Appellant to apply to the learned trial Judge for continuation of the ad-interim relief and the learned Judge will consider the said prayer in accordance with the law, provided the Appellant/Plaintiff cooperates with the learned trial Judge for early disposal of the Motion.

(v) The Appeal is partly allowed in the above terms.

(vi) The Appellant/Plaintiff will pay costs of Rs.5000/- to the Respondent-Corporation within a period of two weeks from today. If the amount of cost is not accepted by the Respondent-Corporation, the same shall be deposited by the Appellant/Plaintiff in the trial Court within the said period.

(vii) The parties and the trial Court to act on authenticated copy of this order.

Judge.